Property and Attachments: Defining Autonomy and the Claims of Family in Nineteenth-Century Western India

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Historically, the abolition of slavery marked the signal moment that established a legal distinction between people and property: people could not be property. If slavery had been based on the potential equivalence or interchangeability of people and property, its abolition asserted an absolute legal and moral difference between them. Yet, these dichotomous ways of thinking about persons and things emerged alongside and in tension with a third way of thinking that they now obscured, in which property and personhood were closely linked—in which property tied people to communities, to particular histories, and to personal status; property was what was 'proper' to the person.[1] While the trade in and ownership of persons has been broadly condemned, this connectedness of property and personhood has remained crucial to modern notions of the individual, privacy, and subjectivity. Indeed, the story of the emergence of the modern legal subject is often told as the progressive, if inevitably incomplete, process of publicly superceding this linkage of property and personal status, and limiting it to a demarcated private sphere. Such formulations construe the family as a domain where persons and things will necessarily continue to be linked, where relationships will inevitably blur affective, moral, and material claims, and where relationships of status will continue to prevail.[2]

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[1] Carol Rose, "'Takings' and the Practices of Property: Property as Wealth, Property as 'Propriety,'" in *Property and Persuasion* (Boulder: Westview Press, 1994), 49–70. See also J.G.A. Pocock, "The Mobility of Property and the Rise of Eighteenth-Century Sociology," in *Virtue, Commerce, History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge: Cambridge University Press, 1985), 103–24.

[2] Perhaps the most influential description of this process has been the pithy phrase "from status to contract," coined by mid-nineteenth century British legal scholar and colonial Indian legal coun-

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This article takes up the question of how modern states have defined the privacy of property(ies),[3] and the public equivalence of individuals. Through a particular history of British colonial law in western India, it offers a way of reconnecting histories of the modern state with histories of intimate life, and of tracing the historical relationships among modern forms of property, family, and legal subjecthood. My central claim is two-fold: first, that intimate property arrangements and disputes within families formed a key site for colonial formulations of legal subjecthood, and further, that such formulations emerged through a process—both indigenous and colonial—of reconceptualizing the attachments that family relationships entailed. Thus, although family property disputes constituted just one arena among many where ideas about legal subjecthood were developed, it encapsulated and brought to the fore emerging issues in the disparate domains of criminal law, intercaste and intercommunity relations, commercial law, and municipal regulation. This was in part because familial disputes, or the involvement of a female litigant, or historical lineage relations, often shaped the contexts in which questions concerning the nature of individual intent, or the power to enter into a contractual relation, or the basis for particular inter-community relationships, emerged for colonial legal determination. Ultimately, colonial formulations of indigenous legal subjecthood were premised both on assumptions about the encumbered nature of indigenous intimate life, and on a model of these attachments continually exceeding the intimate sphere. Yet, the process of reconceptualizing such familial attachments involved both the colonial legal order and indigenous litigants' own re-imaginings, drawing in part on the determinations of the courts, of the kinds of claims their relationships might entail.

I use the term attachments to refer to the complex connections that linked family members to each other in relationships of obligation, affect, dependence, inheritance, loyalty, debt, and the like, involving varying degrees of intentionality or agency. In referring to the unstable qualities, the mobility, or convertibility of attachments throughout this piece, I aim to emphasize the ways in which one form of attachment is converted or transformed into another within family relations, for example, the transformation of the food and love that raise children into bonds that tie them to the family, or the exchange of a wife's sexual and social reproductive labor for her protection and good treatment within

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selor, Sir Henry Sumner Maine. See his *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (London: John Murray, 1930; 1st ed. 1861), 180–81. See also Thomas Trautmann's important discussion of the relationship between mid-nineteenth-century historical theories of kinship and theories of property and law, in *Louis Henry Morgan and the Invention of Kinship* (Berkeley: University of California Press, 1987).

[3] For discussion of the ways in which personal characteristics and qualities came to be conceptualized as private, in a similar way to wealth, see Wendy Brown's analysis of Marx in "Rights and Identity in Late Modernity: Revisiting the 'Jewish Question,'" in, Austin Sarat and Thomas R. Kearns, eds., *Identities, Politics, and Rights* (Ann Arbor: University of Michigan Press, 1995), 85–130.

her husband's family. This article tells a story of the emergence of the autonomous legal subject through the vicissitudes of reshaping the attachments that readily linked property and personhood within a common field of transactions and exchange. Bourdieu's provocative comment, "[a]s everyone knows, priceless things have their price," offers one way of thinking about this convertibility of different forms of value.[4] This piece explores a similar social fact, but focuses on the ways in which formulations of modern legal subjecthood were historically linked to ideas about intimate attachments and debts. It traces how the colonial courts in this region reshaped the particular intimate practices of material and symbolic obligation, repayment, barter, and circulation that the state would enforce.[5]

Some of the issues at stake in defining the relationship between property and personhood emerge in an early colonial inquiry into prevailing social practices in western India at the time of British conquest in 1818:

> May [a] Creditor seize Debtor[']s Wife, children or Goods—may he seize Debtor person & beat, or otherwise violently coerce him without legal authority?; What caste persons may be compelled to work out a Debt by daily labour, and what kind of work may be imposed on each Caste; When there are several creditors of the four different Casts [sic.]—is the priority of these debts,—the validity of their deeds, or the superiority of their Casts, of most Weight . . . ; If [a] Debtor be confined, state the rules under which he is allowed to return to his Meals, and satisfy the causes of nature, and the degree of latitude allowed for Ceremonies, etc.[6]

These questions, probably posed to local Brahmin authorities, remain unanswered in the colonial archive. Yet, they illuminate early colonial efforts to understand indigenous practice in the region within the context of ongoing British questions that were being worked out at this time: What was the nature of property-in-the-person?[7] Could one's own body (or the bodies of one's wife and children as forms of personal wealth) be liable for the extraction of payment?

[4] Pierre Bourdieu, "The Forms of Capital" in, John Richardson, ed., *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press, 1986), 241–58; and "Le capital social," in *Actes de la Recherche en sciences socials* 31 (Jan. 1980), 2–3. For a different parsing of the relationship between affective and material claims, see Dipesh Chakrabarty, "The Subject of Law and the Subject of Narratives," in *Habitations of Modernity* (Chicago: University of Chicago Press, 2002), 101–14. Chakrabarty's formulations are discussed in further detail in note 86, below.

[5] An important aspect of the history of colonial state enforcement is the diminishing power and jurisdiction of non-state sources of authority such as caste councils and local tribunals (*panchayat*s) in relation to the state. For discussion of this issue in comparative colonial context, see Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York: Cambridge University Press, 2002).

[6] Puné Archives, Marathi Daftar, Deccan Commissioner's Files, Rumal No. 136, Loose Papers (no date; probably 1818–1826 based on other papers in same collection). Questions posed by Mr. Thackeray (unpaginated). Emphasis in original; bracketed notes added.

[7] For early colonial conceptualizations and policies regarding indigenous forms of servitude, see Indrani Chatterjee, *Gender, Slavery, and the Law in Colonial India* (Delhi: Oxford University Press, 1999).

What were the uses and pleasures to which a body could legitimately be put? Could personal status (e.g., lineage, caste) define a person's socio-legal claims? Could civil claims be enforced by penal measures such as imprisonment, beatings, or torture?[8] Given that slavery continued to exist as a matter of great contention throughout the British empire until 1843, that the abolition of slavery was itself followed by a system of indentured labor (involving Indians, Chinese, and others) in which violations of the labor contract were punished by penal measures, and that within Britain, the imprisonment of debtors was not formally abolished until 1869, these questions reflected contemporary British uncertainties about the nature of personal liability and legitimate forms of repayment, and about the wealth that inhered in bodies. [9]

The dilemmas involved in defining property, personhood, and autonomy within the law emerge in sharp relief in the colonial Indian context both because of the particular form of the colonial legal system established there, and because of the incongruities involved in framing the legal subjecthood of colonized peoples.[10] The colonial legal system that was established as the British conquered new regions of India during the late eighteenth and early nineteenth centuries was framed as a dual system in which matters relating to indigenous religion and the family would be adjudicated according to indigenous religious laws, under separate jurisdiction from the civil law of the state. This dual system followed the contemporary practice in England itself, where matters related to inheritance, marriage, and the family fell under the jurisdiction of the Ecclesiastical courts.[11] While England and colonial India thus shared a system in which relations of family were conceptualized as fundamentally private, in India the claim that the colonial rulers were simply respecting and enforcing existing indigenous laws was crucial to the legitimacy of the state throughout the era of colonial rule. In this context, the colonial administration conceptualized Indian families as quintessentially private and outside the purview of the state, even as the state regularly adjudicated and legislated on family matters. Moreover,

[8] On the construction of the early colonial system of criminal law, see Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998).

[9] Issues surrounding credit and debt formed a central anxiety in eighteenth- and nineteenth-century England. See V. Markham Lester, *Victorian Insolvency: Bankruptcy, Imprisonment for Debt, and Company Winding-up in Nineteenth-Century England* (New York: Oxford University Press, 1995); G. R. Rubin, "Law, Poverty and Imprisonment for Debt, 1869–1914," in, G. R. Rubin and David Sugarman, eds., *Law, Economy and Society, 1750–1914: Essays in the History of English Law* (Abingdon: Professional Books, 1984), 241–99.

[10] The latter issue has formed a major topic of anti-colonial and post-colonial criticism as the contradictions of a system that made colonized people British subjects but not citizens. For a somewhat different line of argument, drawing on Foucault and Agamben, see Nasser Hussain, *The Jurisprudence of Emergency* (Ann Arbor: University of Michigan Press, 2003).

[11] The English state did not take over jurisdiction of these matters until 1857. See Mary Shanley, *Feminism, Marriage and the Law in Victorian England, 1850–1895* (Princeton: Princeton University Press, 1989). Also Richard W. Lariviere, "Justices and *Panditas*: Some Ironies in Contemporary Readings of the Hindu Legal Past," *Journal of Asian Studies* 48, 4 (Nov. 1989): 757–69.

indigenous families regularly brought their personal arrangements and disputes before the colonial courts for adjudication, and indeed, it was such actions that formed the occasion for most of the official determinations of record.

From the beginning of their engagement with India, the British identified the key indigenous religious systems that would form the basis for laws of the family as Hindu and Muslim, and worked to codify them accordingly. Determining the basis for these legal systems, however, and particularly for Hindu law, was a matter of ongoing debate and uncertainty throughout the era of colonial rule, as there were competing sources of authority for the law.[12] Should the colonial codification of Hindu law be based on the formal prescriptions of ancient religious texts that often bore little relation to people's everyday lives? Should it be based on the laws of the previous ruling power in each region? Or should it be based on the actual customs and practices of the local people? It is the adjudication of cases involving those classed as subject to Hindu law that this article addresses.[13]

By the time British forces definitively conquered western India (the bulk of the territory that was to become the Bombay Presidency) in 1818, more than a half-century had elapsed since their initial conquests in eastern India and since their concomitant early efforts to establish institutions of rule. This accumulated experience of colonial administration informed colonial pursuits in the newly conquered region. However, while in Bengal an early generation of British officials, legal scholars, and scholar-administrators had been drawn to the extensive indigenous traditions of textual learning in formulating colonial Hindu law,[14] by the time the British conquered the Bombay region, there was widespread official recognition that actual social practice often diverged markedly from the dictates of those texts. This recognition was also accompanied by official interest in and attentiveness to the significant regional differences among the conquered peoples.[15] These countervailing emphases meant that the colo-

[12] See J.D.M. Derrett, *Essays in Classical and Modern Hindu Law, Vols. 1–4* (Leiden: Brill, 1976–1978), especially vols. 2 and 3. The issue of competing sources of law at least superficially appeared less problematic in the context of Muslim law, as the Shari'at was recognized as a foundational legal text for Muslims. Nonetheless, colonial Muslim law replaced the authoritative styles of argumentation and judicial reasoning that characterized Muslim jurisprudence with British legal forms. See Gregory Kozlowski, *Muslim Endowments and Society in British India* (Cambridge: Cambridge University Press, 1985).

[13] I have not addressed the parallel issues in relation to colonial Muslim law because the number of reported cases involving family disputes is not adequate to trace changes over time.

[14] For discussion of the construction of a colonial "Hindu law" based on an elevation and reification of ancient Brahmanical texts, and the use of these texts in conjunction with an English precedent-based system, see Bernard Cohn, "Law and the Colonial State in India," in *Colonialism and Its Forms of Knowledge* (Princeton: Princeton University Press, 1996), 57–75; Lata Mani "Contentious Traditions: The Debate on *Sati* in Colonial India," in, Kumkum Sangari and Sudesh Vaid, eds., *Recasting Women: Essays in Indian Colonial History* (New Brunswick, N.J.: Rutgers University Press, 1990), 88–126.

[15] George Steinmetz discusses the importance of competitive claims among colonial officials to

nial institutions that were developed in western India both drew upon earlier colonial formations and were also shaped by the aim of responding to local or regional specificity. Thus, the Bombay Regulations of 1827, formulated by Governor Mountstuart Elphinstone as the first comprehensive colonial legal code for the region, recognized the principle that custom should be treated as the most legitimate source of law.[16] At the same time, however, colonial authorities nonetheless drew on indigenous textual experts and on evidence of pre-colonial legal practice to identify certain texts as the foundational sources of law for the region, as the touchstones against which the particularities of custom would be defined.[17]

In this climate of policy-making and debate, nineteenth-century colonial officials argued extensively about what kind of private property had existed in pre-colonial India and whether it should be transformed by the colonial regime.[18] However, the family-based nature of indigenous property holding, and the property-based nature of Indian family structures were axiomatic principles within colonial administration and legal adjudication. "Joint family" and more particularly "joint Hindu family" was the term that referenced both this form of property-holding and this type of family structure in which property was held in common among multiple generations of lineal males who lived and ate together within a single household. The model of the joint Hindu family reflected a combination of ancient textual prescription and contemporary evidence of customary practice. This model, at once indigenous and colonial, shaped legal adjudication throughout the period of colonial rule.

Colonial Hindu law defined joint family property, also called ancestral property, as any property that had been passed down to lineal males, or any property that was acquired through the use or benefit of such property (such as the use

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what he calls "ethnographic acuity," in which colonial officials vied for claims to ethnographic sensitivity and skill as a form of cultural capital, in "'The Devil's Handwriting': Precolonial Discourse, Ethnographic Acuity, and Cross-Identification in German Colonialism," *Comparative Studies in Society and History* 45, 1 (Jan. 2003): 41–95.

[16] Sir Courtenay Ilbert, *The Government of India: Being a Digest of the Statute Law Relating Thereto*, 3d ed. (Oxford: Clarendon Press, 1915; repr., Delhi: Neeraj Publishing House, 1984), 359 (pages refer to the reprint). This emphasis on custom notwithstanding, colonial legal practice ultimately worked to marginalize custom in favor of written text. This issue has been addressed extensively by post-colonial feminist scholars. See for example, Uma Chakravarti, *Rewriting History: The Life and Times of Pandita Ramabai* (Delhi: Kali for Women Press, 1998); Lucy Carroll, "Law, Custom and Statutory Social Reform: The Hindu Widows Remarriage Act of 1865," *Indian Economic and Social History Review* 20, 4 (1983): 363–88.

[17] In western India, the primary textual authorities were identified as two scholarly commentaries, the eleventh- or twelfth-century *Mitakshara* by Vijñaneshwara and the early seventeenth-century *Vyavahara Mayukha* by Nilakantha, both of which were elucidations of a second- or third-century C.E. prescriptive text by the sage Yajñavalkya, called the *Yajñavalkyasmriti*.

[18] Ranajit Guha, *A Rule of Property for Bengal: An Essay on the Permanent Settlement* (Paris: Mouton and Co., 1963); Eric Stokes, *The English Utilitarians in India* (Oxford: Clarendon Press, 1959); and "The Land-Revenue Settlement of the North-Western Provinces and Bombay Deccan 1830–1880: Ideology and the Official Mind," in, Burton Stein, ed., *The Making of Agrarian Policy in British India 1770–1900* (Delhi: Oxford University Press, 1992), 84–112.

of agricultural revenues to build a house). Within colonial administration, the collective sharers in such property were called coparceners and their estate was termed a coparcenary. Nineteenth-century colonial legal policy explicitly held that all Hindu families were to be presumed to be joint, and all their property was to be presumed to be joint family property, unless either were proven otherwise. Jointness for the British thus indexed a particular Indian, and especially Hindu, form of non-autonomous property ownership.[19]

In this context, legal cases concerning the power of individual family members to mortgage or sell family property, or concerning the inheritance of debt, or concerning the power of a son to claim his share of family property against his father's will, formed a crucial terrain for defining the contours and limits of individual autonomy and the claims of family.

I begin this study by examining an early colonial inheritance dispute that highlighted the stakes involved in defining joint ownership. In this dispute between a nephew and an adopted son, the official decision reflected British understandings of the ways in which property for Indians created relationships, forged obligations, and signaled the particularities of social status.

In the second section, I consider how suits involving creditors and debtors drove the ongoing legal elaboration of joint family and joint family property throughout the middle decades of the nineteenth century.[20] In these cases, as

[19] While British formulations of the peculiar nature of 'the Hindu family' were framed as a foil to British forms of property holding and domesticity, they also resonated with British forms in important respects. This parallel emerges, for example, in the English practice of settlement of estates, in which a successor to an estate held some form of life interest, but full power over the estate was held in reserve by the larger family and its potential future members. See Barbara English and John Saville, *Strict Settlement* (Beverley, North Humberside: University of Hull Press, 1983). Similarly, the idea of heirlooms—inherited objects that held within them family histories and sentimental attachments—resonated in significant ways with the attachments of property that the British identified as particularly Indian. These explicit and implicit conceptual resemblances point to the particular style of colonial cultural translation that was involved in creating both modes of differentiation and cultural equivalencies. See Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000); Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse?* (London: Zed Books, 1986); Lydia Liu, "The Question of Meaning-Value in the Political Economy of the Sign," in, Lydia Liu, ed., *Tokens of Exchange: The Problem of Translation in Global Circulations* (Durham, N.C.: Duke University Press, 1999); Homi Bhabha, *The Location of Culture* (New York: Routledge, 1994).

[20] The question of whether colonialism led to an expansion or intensification of indebtedness has long been a subject of debate, dating to the colonial era itself. For contemporary colonial debates, see Bombay Archives, Judicial Dept. 1851, Vol. 12, Comp. 518, "Debtors—Agricultural Class—Measures for the Relief of," pp. 61–137. For examples of suits involving indebtedness, see *Duyashunker Kasseram v. Brijvullubh Motheechund* (1830), Bom. Sel. S.D.A. Rep. 1820–1840, pp. 41–42. Bombay Archives, Judicial Dept. 1836, Vol. 5/358, "Appeals—Bhasker Ram Ghokley vs. Jya Baee—Claim Rs. 500," pp. 114–48; *Dewarkur Josee bin Bhutt Josee and Bapoo Venaik Goreh v. Naroo Keshoo Goreh* (1837), Bom. Sel. S.D.A. Rep. 1820–1840, pp. 190–92; and Bombay Archives, Judicial Dept. 1847, Vol. 11/1274, Comp. 17, "Appeals—Sultanjee Bin Trimbuckjee vs. Ballajee Tarraen Nathoo," pp. 48–156. More recent accounts of the effects of colonial property regimes on agrarian society and rural indebtedness include Neil Charlesworth, *Peasants and Imperial Rule: Agriculture and Agrarian Society in the Bombay Presidency, 1850–1935* (Cam-

family members regularly sought to mortgage or sell family property, and as creditors sought to attach such property for the repayment of debts, the colonial courts in effect defined autonomous property ownership in relation to an individual's power to alienate it. This focus on alienability reflected particular conceptions of the nature of private property and ownership, in which absolute ownership entailed the autonomous power to transact with the object. In these cases, alienability thus came to serve as a proxy for autonomous ownership.

From these questions concerning the nature of ownership, I turn to colonial legal deliberations on the textually prescribed and locally accepted practice of sons inheriting their father's debts. I show how such cases highlighted issues of personal autonomy and liability, as well as the ironies of attaching and detaching sons from their fathers.

In the third section, I continue the exploration of the connections between fathers and sons and the nature of ownership by comparing two cases involving attempts by a son to demand his share of family property while his father was still living. If the early nineteenth-century cases discussed in the first two sections had focused on the problem of defining individual ownership and personal liability, these cases ultimately revolved around the question of whether different kinds of objects involved different kinds of ownership, most particularly, whether immoveable property (such as land and houses) and moveable property (such as money, goods, and jewels) entailed different kinds of claims.

The distinction between moveable and immoveable property was present in both British legal and Brahminical prescriptive texts, as well as in colonial reports of local practice. The widespread recognition of this distinction meant that colonial officials at every level regularly treated immovable property as involving different rights and claims from moveable property.[21] Nonetheless, the distinction between moveable and immoveable property raised fundamental questions about the nature of ownership of different kinds of things.[22] How was ownership of money different from ownership of land, or ownership of jewels

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bridge: Cambridge University Press, 1985); Sumit Guha, *The Agrarian Economy of the Bombay Deccan, 1818–1941* (Delhi: Oxford University Press, 1985). Within these debates, it seems clear that the colonial property regime in the region made it easier for creditors to attach and foreclose on the property of their debtors. For the purposes of this piece, however, I am primarily interested in the types of arrangements and property forms that credit and debt entailed.

[21] For a critique of early anthropological theories of property and the gift, and of the categories "moveable" and "immoveable," see Annette Weiner, *Inalienable Possessions: The Paradox of Keeping-While-Giving* (Berkeley: University of California Press, 1992).

[22] This issue has been taken up in somewhat similar ways both by Weiner, op. cit., and by Margaret Radin in *Reinterpreting Property* (Chicago: University of Chicago Press, 1993)—emphasizing the existence of "inalienable" or "personal" property, that operates (or should operate) according to different rules of circulation than other forms. For an important discussion of the changing meanings of objects engendered by the colonial encounter (as well as an early critique of Weiner) see Nicholas Thomas, *Entangled Objects: Exchange, Material Culture, and Colonialism in the Pacific* (Cambridge, Mass.: Harvard University Press, 1991).

different from ownership of a house? This was a critical issue animating eighteenth-century British property and political theory,[23] and it was central to colonial adjudication of indigenous property claims. The fundamental property question raised by these suits was, to what extent did the meaning of ownership depend on the type of object, the history of its acquisition, or the nature of the person who acquired it? The trend in these suits, towards making different forms of property more equivalent, and thus more fungible and readily adjudicable, may be loosely seen as following a logic of rationalization and disenchantment, in which objects lose their signifying qualities and value is determined in relation to universal equivalents.

In the final section of the paper, I explore the complexities of this process, gesturing at several ways in which, beginning in the mid-nineteenth century, colonial legal institutions started to redefine property and personhood by recasting the attachments that family entailed. In determining what made property joint or individual, in defining personal liability for debt, and in distinguishing between moral and legal obligations of family, the Bombay High Court began to configure autonomous legal subjecthood by reshaping the forms of material and symbolic debt and recompense that attachments could take.

PART I: PROPERTY AS ATTACHMENT: THE JOINTNESS OF JOINT FAMILY IN EARLY COLONIAL ADJUDICATION

In the early days following their conquest of western India in 1818, British officials found themselves confronting a case that brought the disputed meanings of joint family to the fore. This extended and extravagant case was known as the Mankeshwur property dispute, and it revolved around the question of what made property joint in character.[24]

The case involved the family of Sadashiv Pant Bhau Mankeshwur, who had served as Chief Minister to the last pre-colonial ruler in the region, the Peshwa Baji Rao II.[25] Sadashiv Pant, also known as the Bhau, had died in 1817, shortly before the final British conquest of the region the following year. Unlike the other cases discussed below, this case was adjudicated by the District Magis-

[23] J.G.A. Pocock (op. cit.) discusses in rather schematic form the nineteenth-century reconceptualization of the relationship between property and civic virtue. He argues that the eighteenth century was characterized by ongoing debate in which the vision of land ownership—'real' property—as essential to civic virtue was countered by a new (and not entirely persuasive) vision of commerce as refining the passions.

[24] The voluminous records of this case suggest some of the ways in which interactions between colonial officials and various indigenous interlocutors began to create legal logics and institutions, formal pathways of communication, modes of reasoning, and decision-making processes that came to structure both early and later colonial legal frameworks. The formation of colonial legal institutions through interactions with multiple indigenous loci of authority is a crucial aspect of these cases that I have bracketed for purposes of clarity.

[25] Bombay Archives, Judicial Department, 1821–1823, Vol. 10/10, "Deckan [sic.] Civil Justice. Mankeshwur's Appeal," entire volume.

trate and his Assistant, and one of its significant aspects was that it involved colonial officials in articulating as policy the relational character of family property—as saturated and encumbered with family histories and claims.

The Bhau had amassed a tremendous fortune through his service to the Peshwa, far out of proportion to the rest of the family property.[26] Although in the last years of his service he had become embroiled in various internal disputes among ruling claimants, and had some of his property plundered and attached by the Peshwa, at the time of his death he nevertheless held property amounting to more than 1.4 million Rupees (Rs. 14 lakh). The Bhau had lived jointly with his two brothers' families up until his death. Although he had no living sons of his own, at some point before his death, the Peshwa prevailed upon him to adopt a son.[27] He therefore adopted Laxman Rao, a minor eleven years of age, who was the younger son of a distant relative.[28]

Adoption was just one of a range of practices for extending kinship or kinship-like ties. However, it was the primary means of producing the requisite male heir who would perform the funeral ceremonies and continue the adoptive father's hereditary line. Thus, only those without living sons could adopt, only boys could be adopted, and adoption was primarily about securing one's future after death, not about raising a child during one's life. Moreover, because such formal adoption required a ritual transfer of the boy from his birth parents to his adoptive parents, orphans could not be adopted, since there could be no proper gift and receipt. Such exclusion of orphans also naturally insured that the caste and lineage of the birth parents were known.

Adoption created a new claimant to family property, and thus it also dashed the expectations of other family members who had hoped and planned to succeed to the property in the absence of a lineal heir. In this case, the adoption posed an even greater threat to other claimants, since most of the Bhau's property appeared to have been acquired through his own exertions. Such property, which the British referred to as self-acquired property, was not subject to division among coparceners, but descended directly to whomever the owner designated, or failing such designation, to his lineal heirs, in this case, to his adopted son.[29]

Thus, the central question to be decided in this case was whether the extensive property the Bhau had acquired in his service to the Peshwa was joint family property that should be split among the coparceners, or whether it was self-

[26] Sadashiv Pant was not the eldest, but the middle son, and his father had been the youngest son. Notably, these familial positions did not prevent Sadashiv from attaining far greater heights than the other members of the family.

[27] In this case, the political character of the adoption was significant, since the Bhau had adopted at the urging of the ruling Peshwa. It is not clear whether Sadashiv himself wanted to adopt, or why the Peshwa insisted upon it.

[28] The child adopted was the Bhau's grandfather's brother's great-grandson, a separation of six degrees.

[29] Although there was no textual tradition that legitimated wills among Hindus, the practice of making wills for self-acquired property had arisen in the region, at least sporadically, before British conquest, probably drawing from Muslim practice.

acquired property that remained separate from the joint family estate and would descend entirely to his adopted son. This question raised the practical problem of how to determine what it meant to acquire property through one's own exertions. In other words, what kinds of benefits of growing up and living in a joint family inherently linked all one gained in the future to the family estate, and what kinds of benefits could be viewed as inconsequential to the later accomplishments of a family member? To what extent did the material relationships that linked family members from birth continue to attach a person's later actions and products to the family's expansive domain?

When the Bhau died, he left as heirs: (1) his adopted son Laxman Rao; (2) his older brother, Krishnaji Nana, who made no claim on the property; (3) his nephew Malhar Rao, the son of his pre-deceased younger brother, who disputed the claims of the adopted son; and (4) his two widows, Umabai and Gangabai. It is notable that although the dispute over the Bhau's property was framed between the adopted son, Laxman Rao, and the nephew, Malhar Rao, much of the case was actually fought between the nephew and the elder widow, Umabai, who was serving as guardian of the minor adopted son.

In his original claim to the property, the nephew Malhar Rao argued, first, that the adoption was invalid and that he himself was the Bhau's natural heir, and second, that even if the adoption was valid, he was entitled to a share of the property as coparcener, or member of a joint family, with the Bhau.

By the time the case came before the local British Magistrate, H. D. Robertson, and his first assistant, W. J. Lumsden, Malhar Rao's first argument that the adoption was invalid had been refuted, but his second claim to inherit as a coparcener had deadlocked both an indigenous local assembly, called a *panchayat*, and an assembly of Brahmin priests (Shastris).[30] The parties brought the case before the Magistrates when no other resolution seemed forthcoming. For Robertson and Lumsden, the only question to be determined was whether the Bhau had benefited from any of the family's ancestral property in making his personal fortune. Any such proof would render all the Bhau's property joint family property and would thus be adequate evidence to establish the nephew's claim to an equal share. This reasoning derived from textual (Shastric) dictates that all property gained through the use or benefit of joint family property itself became joint family property.

Based on the evidence they culled, the two officials concluded that the Bhau had at some point benefited from family property, however small—possibly he had used a family horse, or kept several family slave girls[31]—and that there-

[30] For a discussion of the integration and subsumption of these other indigenous institutions of public authority into the early constitution of colonial legal institutions, see Rachel Sturman, "Family Values: Refashioning Property and Family in Colonial Bombay Presidency, 1818–1937," Ph.D. dissertation, University of California, Davis, 2001.

[31] Bombay Archives, Judicial Department, 1821–1823, Vol. 10/10, "Deckan Civil Justice. Mankeshwur's Appeal," pp. 302–3.

fore the entire property was subject to the rules of joint family property and should be divided equally among the coparceners. Their decision in favor of the nephew Malhar Rao thus emphasized the ways in which histories of property produced future obligations, attaching men to their families throughout their lives and beyond.

Ironically, however, the Magistrates' efforts to conclusively establish the jointness of the property that the Bhau had acquired ultimately unearthed divergent understandings of jointness within the Mankeshwur family itself. For example, the nephew Malhar Rao attempted to demonstrate the jointness of the family property through the following statement:

> When my third marriage took place in Shuku 1737 in the month of Phalgoon (March 1816) in the family of Krishna Rao Méghu-Sham Deshmook of Indapoor that personage gave one and a half Chahoors of Land in the Village of Teesry[?]—the deed for which was made out in the name of Nanajee Mankeshwur [the eldest brother]; and the deed for the Mansion, and Garden, at Benaras; which were also given, was taken in the name of Bhow Saheb; the Dowery was mine, but, the property being undivided, the (Andhun Puttee) or deed of Dowery, were made out in the names of both the Elders; In such a manner, does undivided property exist in my family.[32]

This example not only failed to demonstrate the existence of joint property according to British colonial definitions, but also put the very meaning of joint property into question. What the colonial officials were looking for were, first, examples of inherited or acquired property that was used by all the male members of the family, and then further, examples showing explicitly that the Bhau had used and benefited from such property, thus rendering his extensive self-acquired property subject to division among his coparceners.[33] Instead, Malhar Rao's example raised questions about the nature of property titles and ownership: if a deed to property was given in the name of certain people, did it really belong to other members of the family? Were the elder brothers meant to hold the dowry in this example on behalf of their younger nephew, or were they meant to share in it equally with him, or were these gifts in fact to them personally, which the nephew was now claiming as his own property?

Certainly Malhar Rao's use of this example can be read as an interested attempt to demonstrate the existence of joint family property in his family, which was crucial to his case. Yet, this example is most striking in suggesting an incongruence—an incomplete overlap—between Malhar Rao's interpretation of the crucial elements defining his family relationships and colonial definitions of joint family property.

Similarly, it is notable in this context that the remaining brother of the Bhau, his older brother Krishnaji Pant, renounced any claim to the property, stating that he had received an appropriate amount from the Bhau during the latter's lifetime. The reasons for Krishnaji's decision not to claim the property are impossible to determine. Yet they highlight the diverse views within the family it-

[32] Ibid., pp. 474–75[?]. Parenthetical comments in original; bracketed comments added.
[33] See especially the questioning regarding hereditary offices (*watan*) at ibid., pp. 600–17.

self of the claims that jointness entailed. Given that the Bhau had long acted as generous patron and supporter of the entire family, that he had made gifts and given generous allowances to family members and retainers, it is possible that questions of propriety and just claims could also be considered in terms of this role of compulsory generosity, rather than solely in terms of the strict division of shares. In other words, because of the exceptional circumstances in this case, in which one family member had amassed enormous wealth out of proportion to the entire remainder of the family's property, the determination of proper distribution of this wealth may have been subject to different informal rules of propriety.

The Mankeshwur case involved the colonial government in determining the ways in which indigenous property held within itself family relationships and divergent claims. The nature of the Bhau's property as joint or separate property, and the legitimate claims of his nephew and adopted son, derived from the shape of his family arrangements and from the histories of past property (such as horses and slave girls) that turned into future obligations and tied his fortune to other familial claims. At the same time, the nephew's deposition regarding his marriage dowry, and the elder brother's refusal to claim a share of the Bhau's property, underscore the divergent understandings even within the family of the attachments and obligations that family entailed.

PART II: AUTONOMY AND ALIENATION: CREDITORS AND DEBTORS AND THE ALIENABILITY OF PROPERTY

From the 1830s through the 1860s, perhaps the most significant legal arena in which the nature of family relationships, ownership and autonomy were defined was in disputes between creditors and debtors.[34] The centrality of debt to defining joint family presented certain ironies: first, in that what the British considered the secular property claims of creditors immediately involved the courts in establishing the niceties of religious laws of the family, and additionally, in that defining individual rights within the family had direct implications for the "free" circulation of property and for the security of creditors and debtors. In this context, patterns of colonial adjudication need to be seen as attempting simultaneously to secure the jointness of the joint family in order to protect the security of creditors and debtors, *and* to increase the independence of family members in relation to each other in order to promote market transactions.[35]

[34] The expanding jurisdiction of the Court of Small Causes during this period, extending to claims of value Rs. 600 by new rules passed in 1847, underscores the importance of debt collection in the indigenous use of the courts. The vast majority of the cases filed in the Court of Small Causes were for claims less than Rs. 100 (e.g., approx. 9,500 out of 11,000 in 1853–1854), and the vast majority of cases were decided in favor of the plaintiff or struck off and compromised (5,000 and 4,500 out of 10,500 in 1853–1854, tables, pp. 277, 278). The principal plaintiffs of the Court were Marwaris, or money lenders. This Court was thus used primarily by creditors seeking to enforce debt repayment. Bombay Archives, Judicial Dept., Vol. 26/343 & 998, "Court of Small Causes," pp. 255–309.

[35] This tension reflects competing official interests in enhancing the security of landed property and in expanding circulation and markets. For discussion of shifting emphases and shifting dom-

Throughout the 1830s and 1840s, the question of the power of one family member to mortgage or recover his personal share of undivided joint property came repeatedly before the courts as family members attempted to resist the claims of creditors and as creditors tried to enforce their claims. The legal question at issue in these cases fundamentally concerned the separability and alienability of joint family property: could a member of a joint family transact with his share of the family property while it remained undivided, and in fact unspecified? During these decades, the Bombay High Court repeatedly ruled that he could not.[36]

The answer to this question remained much more unsettled, however, in the relational axis between fathers and sons: To what extent did a father, as head of household, have the power to mortgage, sell, or otherwise alienate the joint family property, given a son's equal claim thereto? Could a son call for partition of the joint family property during his father's lifetime? And to what extent was a son liable for his father's debts?

An 1839 case before the colonial appellate court, or Sadr Diwani Adalat, brought this last question of personal liability and inheritance of debts to the fore. The plaintiff, Amrut Row, was the son of the defendant, Trimbuck Row, and had lived separately from him for twenty years at an estate in Nasik that his father had given over to him by a deed of release (*farkhati*). His father, who was still living at the time of the suit, was proved to be "of profligate character," and according to the deliberations of the court in the original suit,[37] "the imbecility and incapacity of the [father] were evident," as was the fact that the father's creditor had taken advantage of this weakness.[38] Nevertheless, the question remained as to the liability of the son's estate (released to him by his father) for the father's debts. The court of first instance had reluctantly decided, based on an exposition of the textual authorities provided by its Shastri, that according to Hindu law, a son was responsible for his father's debts.

Amrut Row appealed this decision, and cited in his favor two cases from the appellate court's file, in which the opinion of the Shastris had established that,

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inance between these visions, see Ranajit Guha, op. cit., and Stokes, op. cit. This tension is also discussed in Margaret Jane Radin, op. cit., although Radin does not address historical issues.

[36] Bombay Archives, Judicial Dept. 1836, Vol. 5/358, "Appeals—Bhasker Ram Ghokley vs. Jya Baee—Claim Rs. 500," pp. 114–48; *Dewarkur Josee and Bapoo Venaik Goreh v. Naroo Keshoo Goreh* (1837), Bom. Sel. S.D.A. Rep. 1820–1840, pp. 190–92; Bombay Archives, Judicial Dept. 1847, Vol. 11/1274, Comp. 17, "Appeals—Sultanjee Bin Trimbuckjee vs. Ballajee Tarraen Nathoo," pp. 48–156.

[37] This was the Court of the Agent for Sardars. Sardar was an honorary title accorded to leading families in the pre-colonial regime, and continued by the British as a strategy for enhancing their legitimacy and support among the old ruling elite. Among the most important perquisites attached to the title was immunity from certain forms of judicial process, a continuation of pre-colonial privileges. This translated within the British system as immunity from regular process in the civil courts. Civil disputes involving Sardars were thus handled in the first instance by the specifically appointed Agent for Sardars.

[38] *Amrut Row v. Trimbuck Row* (1839), Bom. Sel. S.D.A. Rep. 1820–1840, pp. 218–22.

"a father cannot by Hindoo law dispose of hereditary property without the consent of his son, or other heirs, and that should a son during the life of his father wish to live separate, he is authorized by the shaster to take his share of the hereditary property."[39]

Given these competing authorities, the British judge of the appellate (Sadr) court brought the question before his own Court Shastri.[40] The latter gave an opinion in favor of the son, Amrut Rao, in the following terms: "A father and son have equal claim on ancestral property, according to the laws laid down in Metakshura . . . . Hence it follows, that if a son has taken possession of his share of the ancestral property, and a release has been passed, and if his father be free from any incurable disease, the father's debt cannot be recovered from the share allotted to his son. Again the precepts laid down in Meetakshura . . . regarding the discharge of debts, enjoin, that in the absence (death) of a father, the son should discharge his debts. From this it follows, that during the father's life time [sic.], his son is not obliged to liquidate his father's debts.[41] In other words, the Shastri here reasoned that because the authoritative text declared the son liable for his father's debts in the latter's *absence*, therefore he was not so liable as long as his father was still *present*.[42] Since this opinion of the appellate Court Shastri would have reversed the decision of the lower court, the full bench returned to the Shastri in the original suit for further elucidation of his initial replies. The original Shastri responded to the appellate court's queries with the following answer:

> In vuvher Myhook [Vyavahara Mayukha] . . . it is stated, that a debtor after death becomes a slave, servant, wife, or beast of burden to his creditor. Again in Bruhusputtee [Brihaspati] . . . it is stated, that a son should pay off his father's debt, as his own. Again Yudneevulkee [Yajñavalkya] . . . states, if a Father be gone out of the country, or if he be dead, or affected with incurable disease, his son, or son's son must pay his debts. . . .
>
> The expression 'incurable disease' is to be understood as referring to disease either mental or bodily, and a father having the anxiety of his debts on his mind, may be considered as suffering from mental disease, and therefore it is binding on his son to discharge them. . . .[43]

Unsurprisingly, this Shastri's answer failed to convince the full bench of the appellate court. The Justices thus reversed the original decree, holding in favor

[39] Ibid.

[40] The British courts employed Hindu and Muslim religious authorities, Shastris and Maulvis, respectively, to provide legal opinions on issues deemed of a religious nature, based on their exposition of religious texts. The official positions of Hindu and Muslim Law Officers were retained until 1864, when the legal system "superceded" them as part of broader restructuring and reform. See Cohn, op. cit., and Lariviere, op. cit.

[41] *Amrut Row v. Trimbuck Row* (1839), Bom. Sel. S.D.A. Rep. 1820–1840, pp. 218–22.

[42] Shastric opinions reflected a particular style of logic and reasoning, in which a given dictate could serve as basis for multiple different decisions, depending on the Shastri's understanding of the most appropriate outcome of a given case. This style of reasoning produced the common colonial critique of Brahmanical inconsistency and venality.

[43] *Amrut Row v. Trimbuck Row*. Bracketed comments added.

of the son Amrut Row that a son's share in ancestral property was not liable for his father's debts during the latter's lifetime.[44] The Justices' ruling superficially followed the opinion of the Shastri of their own court, however, in effect it ignored what might be considered the central issue at stake for both the Shastris consulted in the suit—the issue of incurable disease. For their own court Shastri, incurable disease was the condition that would have voided the son's otherwise legitimate protection, while for the lower court Shastri, the anxiety of debt was like an incurable disease that rightly tied a son to his father. Thus, while the Justices ignored the issue in their ruling, for both Shastris, incurable disease was a condition that placed a father in a position of socio-ritual and hence legal incapacity and exclusion. It was this resolutely non-secular view of socio-ritual status that, for the Shastris, determined the obligation of a son to stand in the place of his father.[45]

The Court's decision in Amrut Row's case was extended some twenty years later in an 1861 ruling that held that "a son's contingent interest in undivided Ancestral Property is not of such a nature as to be regarded as a Debt, nor such as to make this Property 'his property' and so capable of attachment."[46] Ironically, however, this 1861 decision was based on a view of the inchoate nature of a son's claim to joint family property while his father was alive. In other words, it was precisely because the nature of the son's share in joint property was undefined, and his right to partition during his father's lifetime uncertain, that such property could not be considered liable for his father's debts. In this context, any clear determination of the son's share would have produced the ironic result of binding him more tightly to the debts of his father.

The liability of a son after the death of his father presented a clearer, and hence less rosy, picture, however. Thus, an 1847 decision by the Sadr Diwani Adalat confirmed that, "The Hindoo Law binds a son to pay the debts of his deceased father even if he have not inherited property from him."[47] This principle was not modified until 1866, with the passing of the Hindu Heirs Relief Act

[44] This case, like the Mankeshwur property dispute, in fact involved family members other than those immediately apparent in the legal framing of the case. In this case, Amrut Row was opposed not only by his father, but by his father's wife, standing as guardian for her minor son, presumably Amrut Row's brother or half-brother. Her role in this suit further underscores the incompetence of the father (her husband). But it also highlights the larger issue that legal cases frequently involved family interests and alliances that were obscured by the legal framing of the case.

[45] It is notable that none of the parties in this case made the argument that might be considered a 'bridge' to modern medical legal arguments about mental debility or insanity: that is, that the father's "imbecility" was a form of incurable disease. Nonetheless, such arguments linking mental and legal capacity emerged among British officials in other contexts within a few decades, particularly in discussions about property transactions by widows. Colonial debates about a widow's legal capacity burgeoned during the last decades of the century.

[46] *Moolchund Bhaeechund v. Dhurmlal Deepalal* (1861), Bom. Sel. S.D.A. Rep. Vol. VIII, pp. 9–11. Case from Surat for Rs. 376.

[47] *Hurbujee Raojee, Narrayen Raojee, Govind Raojee, and Gopal Raojee v. Hurgovind Trikumdass* (1847), Sel. S.D.A. Rep. 1840–1848, p. 76. Case from Thana for Rs. 175.

(Bombay Act VII of 1866), which limited the son's liability to the amount of any ancestral property he inherited.[48]

This legislation paralleled and expanded a trend in the High Court [49] starting in the 1860s, of enhancing the individual claims of family members against each other and solidifying individual control over self-acquired property, particularly to the benefit of sons. In contrast to the decisions of the 1830s and 1840s, which had repeatedly limited the expression of separate interests within the family, these 1860s cases in the High Court readily established that a member of an undivided family had the power to mortgage his share of joint property without the consent of his coparceners.[50] In other words, the High Court began treating joint, undivided property as composed of separable and alienable claims.

PART III: SEPARATION AND DISENCHANTMENT: DEFINING THE AUTONOMY OF SONS

This reconceptualization of joint property as composed of separate, autonomous shares occurred alongside an effort by the High Court to clarify the power of coparceners to divide or partition the family property itself. The right to call for partition of joint family property was central to an adult male's claims as a member of a joint family, even as it dissolved the joint family as it had previously existed. Yet, the right of a son to call for partition from his father during the latter's lifetime was a subject of uncertainty and repeated contention throughout the nineteenth century. In part, this was because the issue, like virtually every other, was itself unresolved within the Brahminical textual authorities. In addition, however, the legal debate over the respective rights of fathers and sons was part of a larger set of colonial questions concerning the implications of jointness for the way property was owned.[51]

Central to this issue was the underlying question of whether different forms of property entailed different kinds of ownership, most importantly, whether

[48] This Act followed upon considerable public and official discussion as to the effects of indebtedness among the rural population. Although legislation limiting personal liability for inherited debts was ultimately enacted, many British district officers solicited for their opinions on the proposals pointedly criticized the effort to end the inheritance of debts as a violation of Hindu law. Bombay Archives, Judicial Department, 1851, Vol. 12, Comp. 518, "Debtors—Agricultural Class—Measures for the Relief of," pp. 61–137.

[49] The High Courts were established in each Presidency in 1861, replacing the Sadr Diwani Adalats.

[50] *Gundo Mahadev v. Rambhat* (1863), 1 Bom. H.C.R. 39. Case from Belgaum for Rs. 267-7-6. See also *Tukaram v. Ramchandra* (1869), 6 Bom. H.C.R. 247; and *Vasudev Bhat v. Venkatesh Sambhav* (1873), 10 Bom. H.C.R. 139 that explicitly held that in western India a member of an undivided family can sell his share in the undivided family property without the consent of his coparceners.

[51] This reflected the tension within colonial administration between competing ideologies of property and exchange mentioned above: between enhancing the security of landlords and expanding the alienability of property.

there was a distinction in the nature of ownership of moveable and immoveable property. Colonial adjudication during the middle to late decades of the nineteenth century maps a shift from an emphasis on the distinction between moveable and immoveable property to an emphasis on their shared qualities.[52] This trend enhanced the exchangeability of different forms of property and can be seen in part as concomitant with the expanding market in land during the mid- to late-nineteenth century, which made moveable and immoveable property more readily subject to be converted into each other.[53] This process, which might be considered a kind of rationalization of property forms, emerged only in the context of male property holders, however. In the context of female property holding, the multiple and qualified forms of property holding persisted throughout the era of colonial rule.[54]

The Hindu authorities for the distinction between moveables and immoveables in the context of coparceners[55] were a couple of brief passages from the primary textual authorities in the region, which suggested that although a man's sons and grandsons each had a claim equal to his own in ancestral *immoveable* property, he himself had independent control over ancestral *moveable* property. The specific passages were translated as follows:

> Therefore, it is a settled point, that property in the paternal or ancestral estate is by birth, [although] the father have independent power in the disposal of effects other than immoveables, for indispensable acts of duty and for purposes prescribed by text of law, as gifts through affection, support of the family, relief from distress, and so forth.[56]

> The father is master of all gems, pearls, and corals; but neither the father nor the grandfather is so of the whole immoveable estate.[57]

To mid-nineteenth-century colonial judges, these passages suggested that joint moveable property was fundamentally different from joint immoveable property: that a man might have absolute control, or failing that, absolute control during his lifetime, over joint moveable property, even as his power over immoveables was severely circumscribed.

[52] Of course, certain "civil" distinctions between moveable and immoveable property continued to be applied without question—for example, there were differences in the statute of limitations during which a suit could be brought for the recovery of property wrongfully held. For immoveable property, the period was twelve years; for moveable property, three years. The laws of limitation in fact laid out numerous distinctions among property forms and rights, ranging from a matter of months to sixty years.

[53] For scholarly debates concerning the nineteenth-century land market, see Ravinder Kumar, *Western India in the Nineteenth Century: A Study in the Social History of Maharashtra* (London: Routledge and Kegan Paul, 1968); Charlesworth, op. cit., Sumit Guha, op. cit. Despite their disagreements, there seems to be some scholarly consensus that the market in land expanded noticeably after 1875, and that this process may have been well underway in the 1850s and 1860s.

[54] I discuss this issue briefly below, and in greater detail in Sturman, op. cit.

[55] This distinction was also central in defining the nature of a widow's estate inherited from her husband.

[56] *Mitakshara*, Ch. I, Section I, par. 27, cited in I.L.R. I Bom. 561, at p. 566. This case is discussed in detail below.

[57] *Mayukha*, Chapter IV, Section I, para. 5, cited in ibid., p. 567.

This possibility suggested serious consequences for wealthy banking and merchant families, who held most of their property in moveables. Two sets of family disputes formed the central precedents that shaped colonial adjudication of this issue. The first was an 1861 case involving the claim of an estranged son to partition the estate, including moveables, during his father's lifetime.[58] The second was a similarly protracted case and appeal, involving a claim by the youngest son of prominent Bombay mill-owner and philanthropist Sir Mangaldas Nathubhoy, also to partition of moveables and immoveables within the latter's lifetime. These two sets of cases chart changing judicial interpretations of the distinction between moveables and immoveables within joint family property, that is, changing ways of thinking about how different kinds of objects connected family members to each other.

The first case, which came to be known in judicial circles as the Dada Naik case, involved a wealthy family banking and money-lending business (*shroff*) with branches in several locations.[59] Ramchandra Dada Naik, the son of Dada Naik, quarreled with his father over the conduct of the business. In particular, Ramchandra criticized his father for not keeping regular accounts, while his father resisted his son's attempts to rationalize and otherwise interfere in his business methods. After several serious disputes, Ramchandra was thrown out of the main family residence and forced to live separately in another family home. In 1861 he brought a suit against his father and two brothers for partition of the family estate. The estate included some immoveable property,[60] but extensive moveable property in the form of cash, jewels, furniture, and the like, as well as the banking business itself, in which Ramchandra and his two brothers had participated with their father. The father, Dada Naik, was still living at the time of the suit.

Earlier High Court judgments and opinions of Court Shastris were divided on the question of whether a son had the power to call for partition of the family property during his father's lifetime.[61] In this context, Chief Justice Sausse, who presided over the case, skirted this larger question by emphasizing that there were different forms of joint family property, and that these entailed different forms of ownership. According to the Chief Justice:

[58] *Ramchandra Dada Naik v. Dada Mahadev Naik, Lakshuman Dada Naik, and Keshav Dada Naik* (1861), 1 Bom. H.C.R. (In the Late Supreme Court, Equity Side, Appendix, p. lxxvi). Subsequent disputes among the brothers of the family were fought in 1876 over the power of the father to bequeath the entire ancestral estate in moveables to one son, to the exclusion of the estranged son, and in 1880 over the power of the father to bequeath his own share in ancestral moveable property to one son, to the exclusion of the other.

[59] *Ramchandra Dada Naik v. Dada Mahadev Naik*.

[60] These were primarily in the form of houses in the princely state of Sangli, which was outside of British jurisdiction.

[61] This is apparent in the decision in *Moolchund Bhaeechund, v. Dhurmlal Deepalal* (1861), Bom. Sel. S.D.A. Rep. Vol. VIII, pp. 9–11, also from 1861, cited above, and indeed the High Court considered the point incompletely established even in the Nathubhoy case in 1886, discussed below.

> [T]he right to compulsory partition, if it exist at all, does not extend to moveable property . . . .
>
> The highest authorities recognised in Hindu law hold that as between a father and his sons in the distribution of paternal or other ancestral estate the father takes the moveable property absolutely, or subject only to certain conditions, none of which have been broken upon the facts appearing on this record.[62]

In other words, the High Court held that during his lifetime Dada Naik could dispose of his joint moveable property, which was the bulk of his property, according to his own pleasure. This judgment granted greater authority to the head of household, while it simultaneously enhanced the mobility and alienability of moveable family property, by implying that a father could, during his lifetime, give, sell, or otherwise transact such property, regardless of the claims of sons as coparceners in the family estate.[63]

The Court diverged from this ruling in important ways, however, in the second case some twenty-five years later, in 1886, involving Sir Mangaldas Nathubhoy and his youngest son, Jugmohandas.[64] In contrast to the Dada Naik case, the Court ultimately ruled in favor of the son, confirming that he was entitled to call for partition of family property during his father's lifetime, and that there was no difference between moveable and immoveable property in this respect. This decision at once homogenized moveable and immoveable joint property, while it also worked to expand the autonomy of the son in relation to his father. In other words, here jointness elaborated not an encumbered inheritance, but the autonomy of sons. The Nathubhoy case can thus be seen as working to flatten the distinctions among forms of male property ownership in ways that enhanced the power of sons. [65] This homogenizing process, which facilitated the convertibility of moveable and immoveable property, and which also ultimately redefined the mutual claims of fathers and sons, implied a logic of disenchantment, in which objects were stripped of their multiple forms of value and of their agency in creating and signifying relationships. This agency was now increasingly located directly in the actions of individual family members themselves.

[62] *Ramchandra Dada Naik v. Dada Mahadev Naik,* lxxxiii.

[63] That this power was restricted to the lifetime of the father was confirmed by the second suit, fought among the Naik brothers after their father's death, which disputed the power of the father to bequeath virtually the entire ancestral estate to one son, so as to disinherit the disobedient son. The Court ruled that such a bequest was invalid. See *Lakshman Dada Naik v. Ramchandra Dada Naik & Ramchandra Dada Naik v. Lakshman Dada Naik* (1876), I.L.R. 1 Bom. 561.

[64] The complex nature of the properties involved in this suit produced lengthy and protracted deliberations by the Court. Even the summary provided in the printed High Court Reports is more than fifty-pages long.

[65] This was in no sense a straightforward or unidirectional process, however. For an example of efforts by the Judicial Department to pass legislation that would limit the power of sons, or even brothers, to partition family property in the interests of preventing the fragmentation of land holdings and enhancing agricultural productivity, see Bombay Archives, Judicial Dept., 1889, Vol. 39, Comp. 1203, "Bills—A Bill to Amend the Law Relating to Partition," pp. 263–88. This proposed legislation explicitly modeled itself on the recent English Partition Act of 1868.

PART IV: THE 'TRANSUBSTANTIATION' OF ATTACHMENTS: VALUE, BARTER AND UNIVERSAL EQUIVALENTS[66]

Three trends during the second half of the nineteenth century map this process of redefining the labile quality of attachments and the exchangeability of different forms of value. First, in a move away from the kind of judicial reasoning that had shaped the decision in the Mankeshwur property dispute in the years immediately following British conquest, by the 1880s the decisions of the Bombay High Court regularly expanded the definition of self-acquired property so that property acquired through the new colonial professions, such as the occupation of lawyer or civil servant, could be more readily classed as self-acquired. This process occurred by treating the use of family property to gain education or training as inconsequential for the property later acquired through those professions. In other words, whatever obligations were created by being raised, fed and educated by one's family, they no longer entailed a material debt that carried legal force.[67] Perhaps the apotheosis of this process can be seen in a 1937 case in which the Court's Chief Justice Beaumont turned the previously prevailing colonial legal assumptions about joint family and joint property on their head: "[t]he law, I think, is clearly established that from the existence of a joint family it is not to be presumed that there is any joint family property. There is no presumption that property which belongs to a member of a joint family is joint family property."[68] It was precisely the opposite principle—that all Hindu families are presumed to be joint and their property presumed to be joint family property—that had structured colonial adjudication throughout the nineteenth century and was explicitly enunciated even in the mid-1880s.[69]

Second, by the 1850s, there were clear attempts across legislative, judicial, and journalistic domains to restrict practices of debt repayment through terms of labor or sexual service. As in Britain during this era as well, these concerns extended the language and model of slavery to these various forms of bondage and servitude.[70] In western India, these took the form of official inquiries as

[66] See Bourdieu's use of this term to discuss the transmutability of forms of capital, in Pierre Bourdieu, "The Forms of Capital," op. cit.

[67] Such expansion of the category of self-acquired property was legally enacted in 1930 with the Hindu Gains of Learning Act. However, the Bombay High Court had long been treating such property as self-acquired. See *Luximan Narayan v. Jamnabai* (1882), I.L.R. 6 Bom. 225.

[68] *Babubhai Girdharlal v. Girdharlal Hargovandas* (1937), I.L.R. 61 Bom. 708.

[69] *Moolji Lilla & Dhurm Lilla v. Gokuldas Vulla, Ranchordas Darsi & Dayal Darsi* (1883), I.L.R. 8 Bom. 154.

[70] For discussions of the salience of the language of slavery to British sociological and legal formulations in eastern India in the early decades of the nineteenth century, see Gyan Prakash, *Bonded Histories: Genealogies of Labour Servitude in Colonial India* (Cambridge: Cambridge University Press, 1990); Indrani Chatterjee, op. cit.; and Radhika Singha, op. cit. For discussion of the highly mobile analogy of slavery in Victorian Britain, see Judith Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge: Cambridge University Press, 1980); and *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992); Mary Shanley, op. cit.; Antoinette Burton, *Burdens of History: British Feminists, Indian Women, and Imperial Culture, 1865–1915* (Chapel Hill: University of North Carolina Press, 1994).

well as journalistic exposés concerning such matters as the extraction of unpaid labor, practices of debt bondage, and the dedication or sale of women and girls into various forms of marriage or sexual service.[71]

For example, in 1858, an American missionary paper operating in western India published an article on the oppression of poor rural laborers by local moneylenders to the following effect:

> Another thought suggests itself in this connection, showing the demoralizing influence of such a condition of things. One man in remarking upon this subject said to me, 'sir, our wives are not our own, while we are thus involved in debt; we and ours are wholly in the power of these tyrants.' . . . To what indignity might not a man whose moral code is but lax at the best, submit under the threat of being driven from his home, in case of a refusal? . . . And what wonder, if the wife influenced by like motives, and governed more by the impulse of a mother's love for her offspring than by the high principles of moral rectitude, should, while loathing the deed, submit to a course which she believes was assigned her? The very thought of such possible degradation, should arouse every philanthropist to inquire, is there not some remedy for this enormous evil. . . .[72]

The article was followed by an editorial comment that further confirmed the degraded state of affairs:

> The remarks of our correspondent in regard to the bad moral influence of this state of indebtedness in the community, are most true and deserving of consideration. We are acquainted with a case where the wife of a poor man went to live with her husband's creditor, and remained with him for months, the husband could obtain release from his debt in no other way. We have been told of another case where a man in the employment of the Government, who had loaned money to a poor neighbour, would not allow him to leave his home and go to another village unless his wife would come and do menial service in his house during her husband's absence. She remained there for some time till the debt was paid by her brother and she was released.[73]

These missionary depictions of the degradation inherent in indebtedness hinged on the problem of a system in which the uses of bodies—the labor and pleasure that could be expropriated from them—were part of the calculation of exchange.[74] The indeterminacy between a creditor's appropriation of a wife's sexual and menial labor also suggests the particular ways in which women func-

[71] The specific focus on debt, insolvency, and traffic in women emerges in the 1850s in legislative debates, as cited in note 48 above, and in journalistic discourse at Bombay Archives, Judicial Department, 1861, Vol. 19, Comp. 571, "Insolvent Courts—An Act for establishing the . . . in the Mofussil," pp. 143–252. Also British Library, *Reports on Native Papers*, Week of 24 Feb. 1883, p. 8, extract from *Indu Prakash*, 19 Feb. 1883, as well as cases discussed at Bombay Archives, Judicial Dept., 1897, Vol. 166, Comp. 367, pp. 481–560. Debates on temple dedication appear at Bombay Archives, Judicial Dept. 1909, Vol. 155, Comp. 1559, "Murlis: Proclamation issued by the Government of Bombay, on the subject of the custom prevailing in the Bombay Presidency of marrying young girls to Hindu gods," pp. 41–177; also discussion in *Tara v. Krishna* (1907), I.L.R. 31 Bom. 495.

[72] Bombay Archives, Judicial Department, 1861, Vol. 19, Comp. 571, extracts from *Dnyanodaya* 1858, Letter Series, "The Condition of the People," letter no. 2, pp. 189–96.

[73] Ibid.

[74] Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997).

tioned within these economies—the differential ways in which their bodies produced value. Within missionary rhetoric, it was this image that encapsulated the immorality of such a system.[75]

By focusing not on the inheritance of debts, which was the essential issue in the courts, but on the potential violation of wives, this portrayal presented adult men primarily in relation to the conjugal couple rather than in relation to paternal or fraternal linkages. Yet, despite this disjuncture between the violations of conjugality that animated such journalistic representations, and the burdens of inheritance that shaped legal adjudication, both discourses shared a concern with limiting the ways in which one form of obligation could be transformed into another—the ways in which sons and wives lived out the debts of fathers and husbands.

Third, by the last decade of the nineteenth century and the early part of the twentieth, judicial decisions in the region worked to de-legitimize various types of gifts, particularly "gifts of affection" from fathers to daughters. When such gifts involved joint family property, and especially land, these gifts now began to be subject to extraordinary scrutiny. From the 1890s through the 1930s, numerous cases involving gifts and bequests to daughters were reported by the High Court.[76] The appearance of the issue of daughters' property claims can be read as another context in which courts became involved in defining the individuation of property and the convertibility of attachments. The decisions in these cases ultimately worked to redefine the implications of jointness in ways that centered more tightly on the claims of lineal males. Of perhaps even greater significance, however, the effect of these suits was to recast the ways in which claims to property operated in relation to claims to affect.

Gifts and wills[77] benefiting daughters sought to ensure daughters' well be-

[75] It is also critical to recognize that this representation ignored the regular sexual/labor exploitation of non-elite women by landlords and upper-caste men in favor of the limited question of the immoral bondage entailed in debt.

[76] Many gifts to daughters and family arrangements made in the 1860s and 1870s came to light in High Court cases several decades later. It is not entirely clear whether this cluster represents a new focus on the part of claimants, or simply a new interest on the part of the Court. However, it is not unlikely that the two worked in tandem, since the Court's scrutiny of earlier family arrangements suggested new possibilities to interested family members. See, for example, *Krishnanath Narayan v. Atmaram Narayan* (1891), I.L.R. 15 Bom. 543; *Krishnarao Ramchandra v. Benabai* (1895), I.L.R. 20 Bom. 571; *Haridas Narayandas Bhatia v. Devkuvarbai Bhratar Mulji* (1926), I.L.R. 50 Bom. 443. See also cases of *Bai Mamubai v. Dossa Morarji* (1890), I.L.R. 15 Bom. 443; *Javerbai v. Kablibai* (1890), I.L.R. 15 Bom. 326; *Bhaskar Purshotam v. Sarasvatibai* (1892), I.L.R. 17 Bom. 486; *Anandrao Vinayak v. The Administrator General of Bombay* (1895), I.L.R. 20 Bom. 45; *Muktabai v. Antaji* (1899), I.L.R. 23 Bom. 39, as well as the case discussed in detail below.

[77] Since Brahmanical textual authorities did not recognize (or mention) the power to make a will, colonial adjudication of Hindu wills was somewhat complicated, shaped by various textual and customary prescriptions concerning joint family property, but also regulated by English testamentary law. The Hindu Wills Act (Act XXI of 1870) formalized in certain ways the law relating to wills for those residing or bequeathing property held in the Presidency Towns of Bombay and Madras, and in the Lower Provinces of Bengal. This Act (for those it affected) rendered a nuncupative (oral) will void and required those claiming under a will to apply for grant of probate (legal

ing and also to mark affective relationships that entailed few enforceable claims, at least on the part of the daughter. Central to the conceptualization of gifts to a daughter was the idea that parents were not required to give a daughter anything, except for her marriage expenses and marriage gifts.[78] The place of marriage expenses within this logic was complex—it was a well-defined obligation, moreover one that was crucial to marking or enhancing the family's social status, but it nonetheless did not comprise a definite portion or share of family property, nor a gift directly to the daughter.

Gifts by parents and other natal relatives to daughters at the time of marriage thus involved weighty but imprecise obligations. While such gifts were part of economies of obligation, status, and social signification, the fact that daughters had no defined claim (i.e., they were not coparceners in the joint family property), left open a space for the gift from affection, as an exceptional expression that both acknowledged and exceeded relations of obligation and that was outside of calculations of the daughter's legitimate powers and demands. This concept existed even within Brahminical textual sources, which defined one form of women's wealth, or *stridhan*, as "a gift from affection."[79] In other words, a daughter had no inherent legitimate claim to family property; she had no power over it, and she could not demand any part of it. Yet, while any gift to a daughter was thus in some sense marked by its exceptional character—it was given, but was not due to her—such gifts also marked an elite obligation to exceed the bounds of obligation.

From the earliest days of colonial rule, gifts and bequests to daughters, or at times to a daughter's husband, appear in the records of government, most frequently (though by no means universally) in cases where the family had no sons or had only adopted sons.[80] Only in 1934, however, did the Bombay High Court

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certification of the validity of a will). The terms of this Act were extended to the countryside in the 1880s. Both before and after the Hindu Wills Act, any bequest that altered the pattern of regular succession, or that the testator could not have validly made during his lifetime, was considered invalid. Thus, a testator could only dispose by will of separate and self-acquired property.

[78] *Stridhan*, literally "woman's wealth," included several different types of wealth, including money and jewels given to a woman by her parents at the time of her marriage, as well as gifts by her parents and husband after marriage. The question of what constituted *stridhan* was a matter of major debate both among Brahminical commentators and among the colonial judiciary. See Raymond West and George Bühler, *A Digest of the Hindu Law of Inheritance and Partition, from the replies of the Sastris in the Several Courts of the Bombay Presidency, with Introductions, Notes, and an Appendix*, 2d ed. (Bombay: Education Society's Press, 1878).

[79] This form was called *Saudayaka Stridhan*.

[80] For cases involving gifts to daughters in conjunction with adoption of sons, see Bombay Archives, Revenue Dept. 1879, Vol. 102, Comp. 436, "Inams & Jagirs, Poona—Narayen Hari Potnis Inamdar of the village of Jolke," pp. 217–93 (p. 223); *Kashibai alias Jankibai kom Ramchandra Dinkarrao Ghatage v. Genu Pawar* (1916), I.L.R. 40 Bom. 668; *Vithal Laxman Mutalik v. Yamutai alias Umabai bratar Sridar Ranganath Tangoli* (1933), I.L.R. 58 Bom. 234. For other kinds of gifts, bequests, and the like, see Bombay Archives, Revenue Dept. 1844, Vol. 71/1628, Comp. 288, "Inams & Jaghirs: Ahmednugger—Ezutbeebee, widow of Burpoor Saheb," pp. 1–3; *Pranjivandas Tulsidas v. Devkuvarbai* (1859), 1 Bom. H.C.R. 130 (Late Supreme Court, Equity Side); *Navalram Atmaram v. Nandkishor Shivnarayan* (1865), 1 Bom. H.C.R. 209; *Haribhat v. Damod-*

report a case on the basic question of a father's power to give joint immoveable family property to his daughter when there were lineal males in existence.

In the case of *Jinnappa Mahadevappa Kundachi v. Chimmava*,[81] one Tammanna, described in the Court record as "a very old man," lived jointly in an undivided Hindu family with one son who was deaf and mute, and with the plaintiffs, who were his grandsons by a predeceased son. Because the only surviving son was deaf and mute, he was considered entitled to maintenance from the family estate, but not to inherit the property.[82] Tammanna held some thirty-eight lands; of these, he made a gift of one to his daughter for her lifetime by a registered written deed, saying that she had cared for him in his old age, and that he had great love and affection for her.[83] After Tammanna's death, his grandsons brought a suit contending that the gift was invalid, as a Hindu has no power to bequeath joint immoveable family property. In the initial suit, the Judge ruled that a small gift of immoveable property by a Hindu father to his daughter out of affection was authorized by Hindu law and by Court precedent. In appeal before the Subordinate Judge, the Judge also confirmed the gift, but on the grounds that it was not a gift of immoveable property, but of the *income* of the lands, and as such constituted a valid gift. In further appeal before the High Court, however, Justice Rangnekar held, with explicit regret, that a Hindu father did not have the power to make a gift of joint immoveable property to the detriment of his coparceners.[84]

This decision recast the implications of jointness and the workings of attachment and obligation in the eyes of the law, overriding the ways in which moral and affective attachments to daughters took material form in favor of the automatic and direct property claims of sons. Moreover, this kind of legal framing posited new relations between property and affection in the case of daughters. Whereas the claim of sons to joint property was inherent in their position as sons and bore no relation to the uncertainties of affection (though as the cases above show, families often tried to direct inheritance based on such affective relations) in the case of daughters, the absence of an enforceable claim to family property meant that property gifted to a daughter had previously typically worked to signal a father's affection and indefinite moral obligation. In this con-

harbhat (1878), I.L.R. 3 Bom. 171; *Babaji bin Narayan v. Balaji Ganesh* (1881), I.L.R. 5 Bom. 660; *Advyapa v. Rudrava* (1879), I.L.R. 4 Bom. 104; *1) Bhagirthibai v. Kahnujirav, 2) Rajaram v. Kahnujirav, 3) Anandrav v. Kahnujirav* (1886), I.L.R. 11 Bom. 285; as well as the cases mentioned in note 77 and the case discussed below.

[81] *Jinnappa Mahadevappa Kundachi v. Chimmava* (1934), I.L.R. 59 Bom. 459.

[82] The ongoing colonial recognition of such non-secular grounds for exclusion from inheritance is significant, as the Caste Disabilities Exclusion Act (Act XXI) of 1850 had explicitly rendered caste excommunication or censure irrelevant to an individual's property claims. In this context, the ongoing enforcement of particular non-secular grounds for exclusion calls for some scrutiny.

[83] It is notable here that even this gift was in the form of a life estate, giving the daughter a limited form of ownership. For a critique of this concept in the context of joint family ownership, see Sturman, op. cit.

[84] *Jinnappa Mahadevappa Kundachi v. Chimmava*, p. 461.

text, the legal invalidation of such material embodiments of obligation and affect suggested instead a model in which material claims were contrary to affective ones, and a claim to property was oppositional to, rather than symbolic of, a claim to love.[85] This inversion again reflected the emergence of a new logic, which attempted to differentiate between the space of capital, with its universal equivalents, its legal and material claims, and the inevitably incommensurable forms of barter, the putatively unquantifiable or irreducible claims, that structured the world of affect.[86]

CONCLUSION

This study of the adjudication of family property in nineteenth-century western India offers a different story of the emergence of the autonomous legal subject within colonial law. Cases that put into question the nature of family relationships and the meanings of ownership worked to establish not the limits of family and of status, but somewhat ambiguous restrictions on the ways in which obligations could be bartered and repaid, and in which personal and familial histories attached to people and to objects. While there was a general process from the middle of the nineteenth century of expanding the individual autonomy of sons, this autonomy was of a particular form—it operated by redefining the legitimate currencies of exchange and insisting that certain attachments be repaid in kind.

Another way of thinking about this is to suggest that autonomy within colonial law was configured based on a fiction of modern disenchantment, in which objects remain inert, and do not produce new relationships, obligations, or marks of personhood. I suggest that this was a fiction of disenchantment because the enchanted character of objects and their connections to subjects has remained a feature of family relationships in India, as in the West. Indeed, in both places, the claim of legal, factual, and moral separation of people and prop-

[85] In the current post-colonial context, daughters have a legal claim to share in the joint family property, which they readily relinquish to their brothers, as they describe it, in exchange for the latters' love. A daughter's *refusal* of property has thus become a marker of her affective claims. See the ethnographic material and analysis presented by Srimati Basu, in: *She Comes to Take Her Rights: Indian Women, Property, and Propriety* (Albany, N.Y.: SUNY Press, 1999).

[86] This argument in some sense aims to offer a counterpoint to Dipesh Chakrabarty's nuanced discussion of the relationship between property and affection in the context of a widow's claims from her deceased husband's family. In "The Subject of Law and the Subject of Narratives," op. cit., Chakrabarty differentiates between claims to rights that can be satisfied by appeal to the law, and claims to affection, which the law cannot redress (but which other forms of narrative can). In Chakrabarty's words, there is an important difference between "property *as such*, that is, the simple fact of possession (which is something that the law can address)" and "property as a language with which to express a domestic dispute about entitlement to affection and protection" (emphasis and parenthetical comments in original). Chakrabarty's elaboration of the multiple kinds of claims that may be embedded in the language of property resonates strongly with the argument I am making here. In contrast to Chakrabarty, however, I would suggest that virtually no claim to property within families was a "simple" claim to property, and moreover, that family members often sought to redress affective injuries through legal means, regardless of the potential "effectiveness" of such a strategy.

erty has remained ambiguous at best.[87] In this context, the family has been a crucial site for formulations of modern legal subjecthood because on the one hand it was where the convertible quality of attachments was redefined, while on the other hand, it was held as a space apart, a space where attachments among people might certainly be vested in objects, and where material and symbolic debts could readily be owed and repaid in manual or sexual labor, or in everyday acts of maintenance and care.

In colonial western India, the ways in which family members engaged in the ready transmutability of attachments presented ongoing contradictions, particularly insofar as family members continued to bring these transactions in obligation and affect before the courts. The ongoing relevance of such familial acts of "transubstantiation" continually returned legal judgments to address the ways in which property became personal substance, established and ruptured intimacies, linked people to past histories and identities, and signaled forms of social authority and exclusion. This produced a situation where the state both acknowledged the ongoing transmutability of various forms of attachment and attempted to circumscribe their intimate operation, nudging and winking at the ongoing enchantment of objects.

[87] This is also demonstrated from another direction most recently in the expansion of modern property frameworks to include elements of personhood, for example in debates about the new reproductive technologies and markets in cells, embryos, organs, and the like. These issues are discussed in some detail in two recent volumes: Janet Carsten, ed., *Cultures of Relatedness: New Approaches to the Study of Kinship* (Cambridge: Cambridge University Press, 2000); and Sarah Franklin and Susan McKinnon, eds., *Relative Values: Reconfiguring Kinship Studies* (Durham, N.C.: Duke University Press, 2001).